UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

STEVEN F. GODIN,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Civil No. 96-194-P-C***
	)	
ALLEN-BRADLEY COMPANY, INC.,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, injured in a 1990 workplace accident that he attributes to a switch manufactured by the defendant, filed this lawsuit in state court to assert claims for strict liability in tort, negligence and breach of implied warranties. The defendant removed the case to this court, based on diversity of citizenship, and now seeks summary judgment as to all claims. According to the defendant, there are no trialworthy issues because there is no basis in Maine law for holding it liable solely for having manufactured a component used by the plaintiff's employer as part of another device, because the employer's spoliation of key evidence should be imputed to the plaintiff, because evidence of causation is lacking, and because the plaintiff's expert is not qualified to present certain opinions he has proffered. For the reasons that follow, I recommend that the defendant's motion be denied.

I. Summary Judgment Standards

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter

of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute is resolved favorably to the nonmovant. By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party . . . .'" *McCarthy v. Northwest Airlines, Inc*., 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give the party the benefit of all reasonable inferences to be drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz,* 917 F.2d 71, 73 (1st Cir. 1990). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, "the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue." *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir.) (citing *Celotex*, 477 U.S. at 324), *cert. denied*, 132 L. Ed. 2d 255 (1995); Fed. R. Civ. P. 56(e). "This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof." *International Assn. of Machinists & Aerospace Workers v. Winship Green Nursing Ctr*., 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

As required by Local Rule 56, each party has submitted a separate statement of material facts. However, the parties have also included certain factual assertions in their respective memoranda of law. I credit only those assertions appearing in the parties' Local Rule 56 factual statements.[1] *See*

[1] Among the evidence submitted by the plaintiff but not cited in the his Local Rule 56 factual statement are three exhibits that the defendant moves to strike (Docket No. 19). The defendant contends this material should be stricken because it would not be admissible at trial. Since the documents at issue do not form any part of the basis of the summary judgment determination for (continued...)

Pew v. Scopino, 161 F.R.D. 1 (D.Me. 1995) (party may not challenge summary judgment decision based on facts not properly presented under method prescribed by applicable local rule). Moreover, Local Rule 56 requires all assertions in the factual statements to be supported by "appropriate record citations." Loc. R. 56. Certain factual assertions of the defendant are not supported by the citations provided, and accordingly I have not credited them. *See Donnell v. United States*, 834 F.Supp. 19, 21 n.1 (D.Me. 1993) (court must deny summary judgment motion to extent motion turns on assertions not supported in manner prescribed by Local Rules).

II. Factual Context

Viewed in the light most favorable to the plaintiff as the non-moving party, the summary judgment record reveals the following relevant factual data: The plaintiff was injured on June 29, 1990, while working as a sandblaster at the Bath Iron Works facility in Portland. Complaint (Docket No. 1a) at ¶¶ 3-4, 7-8; Defendant's Statement of Undisputed Material Facts ("Defendant's SMF") (Docket No. 8) at ¶ 1. He was struck in the leg and arm by material that was accidentally discharged from the sandblasting hose, through its nozzle. Deposition of Steven F. Godin ("Godin Dep.") at 50-51. Following the accident, the plaintiff received workers' compensation benefits from Bath Iron Works to cover medical expenses and lost wages. Plaintiff's Answers to Defendant's Interrogatories, appended to Defendant's Statement of Specific Citations (Docket No. 9), at ¶¶ 15-16.

The plaintiff attributes the accident to a defective "Oiltight Limit Switch" purchased from the defendant and installed on the sandblaster by Bath Iron Works. Complaint at ¶¶ 5-6, 9. Bath Iron Works performed certain modifications before it installed such a switch on its sandblasters.

---

[1](...continued)
reasons already stated, the motion to strike is denied as moot.

Deposition of Helmut Heuer at 51. Specifically, the employer would remove a nylon "trigger" that came with the switch. *Id*. at 18; Deposition of Laura A. Mathisen ("Mathisen Dep.) at 13-14; Deposition of Laurier A. Pessant at 13. The actual switch involved in the plaintiff's accident was lost. Mathisen Dep. at 63.

At least at the time of his deposition in September 1996, the plaintiff did not personally know what caused the sandblaster to switch itself on. Godin Dep. at 50. Laura Mathisen, a safety engineer who is employed by Bath Iron Works and who conducted an investigation concerning the equipment involved in the accident, concluded that the switch activated because a spring inside the switch had become bent when it was "leaned against." Mathisen Dep. at 3-4, 11, 54. Generally, the Bath Iron Works employees who operated this equipment would bend this spring in order to make the switch easier to operate by hand.[2]

In the literature the defendant distributes to customers concerning its Oiltight Limit Switch, the product is described as a machine-operated, as opposed to a manually-operated, device. Deposition of Steven Dukich ("Dukich Dep.") at 49. The product is manufactured according to specifications developed by the National Electric Manufacturer's Association. *Id*. at 101. Steven Dukich, the defendant's manager of quality engineering, is of the opinion that Bath Iron Works was misusing the switch by operating it manually, by permitting users to bend the spring contained in the switch,[3] and by using it outdoors. *Id*. at 5, 46-47, 50, 81. However, there was no warning on the

---

[2] Although the record citations in the parties' respective factual statements do not support this assertion, the parties are in agreement about it. *See* Defendant's SMF at ¶ 4; Plaintiff's Statement of Undisputed [sic] Material Facts ("Plaintiff's SMF") (Docket No. 18) at ¶ 6.

[3] The relationship between bending the spring and the accident is not adequately explained in either of the parties' factual statements. According to Dukich, Bath Iron Works employees would (continued...)

switch or its packaging against using it manually. *Id.* at 48-49.

According to the plaintiff's expert, the defendant should have, but did not, provide a warning in its catalogue or written materials included with the switch to the effect that the switch is not suitable for manual use. Deposition of Jarlath McEntee[4] ("McEntee Dep.") at 63. He also pinpoints similar failures to warn "against the actuation of the mechanism by axially depressing the switch," that "the switch should not be bent beyond a certain degree," and that the switch should not be operated with a bent spring *Id.* at 63, 66, 71.

II. Legal Analysis

a. Failure to Warn

The defendant first contends it is entitled to summary judgment because Maine law would not recognize that the manufacturer of the switch had any duty to warn either the plaintiff or Bath Iron Works against using the switch in the manner that allegedly caused injury to the plaintiff. The parties agree that Maine law applies to the case. It appears that the Law Court has not spoken directly to the question.

At the outset, it is necessary to address the defendant's contention that the plaintiff's entire case turns on whether the defendant had a duty to warn in the circumstances. The plaintiff disagrees, and the pleadings belie the defendant's contention. The warranty claim does not implicate the

---

[3](...continued)
bend the spring because it could then be "jam[med] against what's supposed to be a protective device and cause the sandblaster to be on all the time." Dukich Dep. at 38. However, according to Dukich, this caused the spring to protrude above its protective guard and, thus, the sandblaster could be inadvertently actuated if the switch "happen[ed] to hit some surface that hit[] the spring." *Id.*

[4] There are actually two depositions of Jarlath McEntee in the record. References are to the deposition conducted on November 19, 1996.

failure-to-warn issue. Further, as the plaintiff makes clear in its opposition to the summary judgment motion, its tort claims do not depend solely on its assertion that the defendant breached a duty to warn. According to the defendant, despite the allegations in the complaint the plaintiff's expert has made clear that the only viable theory of liability is failure to warn. Even assuming this is the expert's view of the case, the defendant is not thereby absolved of demonstrating it is entitled to judgment as a matter of law as to all claims on which it seeks summary judgment. Therefore, I treat the defendant's contentions regarding failure to warn as an assertion that it is entitled to summary judgment only to the extent that the plaintiff's tort claims rely on this theory.

To the extent the plaintiff's strict liability and negligence claims rely on an asserted violation of the duty to warn, the analysis is "basically the same" under either theory of liability in Maine. *Pottle v. Up-Right, Inc.*, 628 A.2d 672, 675 (Me. 1993) (citations omitted). In general, "the supplier of a product is liable to expected users for harm that results from foreseeable uses of the product if the supplier has reason to know that the product is dangerous and fails to exercise reasonable care to so inform the user." *Id*. (citations and internal quotation marks omitted).

> An action for failure to warn requires a three part analysis: (1) whether defendant had a duty to warn the plaintiff; (2) whether the actual warning on the product, if any, was inadequate; and (3) whether the inadequate warning proximately caused the plaintiff's injury.

Bouchard v. American Orthodontics, 661 A.2d 1143, 1145 (Me. 1995) (citing *Pottle*, 628 A.2d at 675).

Invoking these principles, the defendant contends it is entitled to summary judgment because a manufacturer of a component part should not be held liable for accidents resulting from the integration of the component into a larger system not built or designed by the component

manufacturer. This is the general rule tentatively proposed by the American Law Institute last year as one that is "well established" and consistent with sound public policy. *See Restatement (Third) of Torts: Products Liability* § 10 and cmt. a (Tentative Draft No. 3, 1996) ("unjust, impractical and inefficient" to impose liability on manufacturer of non-defective component "solely on the ground that the manufacturer of the integrated product utilizes the component in a manner that renders the integrated product defective.");[5] *cf. Restatement (Second) of Torts* § 402A caveat (explicitly taking no position on strict liability for component manufacturer).

Assuming *arguendo* that the Law Court would adopt section 10 of the Draft *Restatement* as Maine law, the defendant is not entitled to summary judgment on that basis. The drafters of the new *Restatement* have stressed that a component seller, "when appropriate, must supply reasonable instructions and warnings to the component buyer, at the time of sale, regarding general risks associated with the use of the component product." Draft *Restatement* § 10 cmt. b. The summary judgment record more than supports the inference that the defendant did not warn Bath Iron Works

---

[5] Proposed section 10 provides that:

> One engaged in the business of selling or otherwise distributing product components who sells or distributes a component is not subject to liability for harm to persons or property caused by a product into which the component is integrated unless:
>
> > (a) the component is defective in itself . . . and the defect causes the harm; or
> >
> > (b)(1) the seller or other distributor of the component substantially participates in the design of the product;
> >
> > (2) the integration of the component causes the product to be defective . . .; and
> >
> > (3) the defect in the product causes the harm.

that the switch at issue in this case should not be used manually. I express no view concerning whether the defendant had a duty to give such a warning given the facts of record, or whether the plaintiff may in these circumstances maintain an action based on a breach of a duty to warn his *employer*. *See id.* at Reporters' Notes ("the duty is to warn only immediate buyers and not to warn users of integrated final products") (citations omitted). My point is only that, under the approach articulated in the Draft *Restatement*, the defendant is not entitled to judgment as a matter of law based purely on its assertion that it manufactured only a component part of a device, not built or designed by the defendant, that caused injury to the plaintiff.

Zaza v. Marquess & Nell, Inc., 675 A.2d 620 (N.J. 1996), which is cited by the defendant and which adopts the Draft *Restatement* approach to component manufacturer liability, does not change the result. The issue in *Zaza* was whether the manufacturer of a "quench tank" could be liable for injuries to a plaintiff whose employer used the tank, without installing safety devices, as part of a system to decaffeinate coffee beans. *Id*. 624. The safety devices, which would have prevented the injuries to the plaintiff, were included in the design plans provided by the manufacturer; the employer simply omitted them from the system as installed. *Id.* at 625. After determining that the manufacturer was not liable for failing to install the safety devices itself or ensure their installation, *id*. at 630-32, the court addressed the issue of duty to warn. Quite sensibly, the court concluded it would be "pointless" to require the manufacturer "to warn of a danger of which the installer, the engineers, the owner, and the company hired to train the employees were already aware." *Id*. at 635. By contrast, the missing element here is any cited evidence from which a factfinder could determine that Bath Iron Works was aware of any reason not to use the defendant's switch in a manual application.

The defendant also relies on *Crossfield v. Quality Control Equip. Co.*, 1 F.3d 701 (8th Cir. 1993), in which the Eighth Circuit determined as a matter of Missouri law that the manufacturer of a chain and sprocket mechanism could not be held liable for failing to warn the purchaser of the mechanism, which was using it as part of a pork processing device it produced and sold to meat processors, that the mechanism could be hazardous when so employed. *Id*. at 702-03, 707. Although the Eighth Circuit framed the issue in terms that suggest Missouri would not adopt the Draft *Restatement* view that component manufacturers have a duty to warn in some circumstances,[6] the *Crossfield* decision, fairly read, ultimately turns on the fact that the manufacturer created the mechanism according to specifications provided by the purchaser who integrated the component into its own device. *Id*. at 706-07. In other words, *Crossfield* shares with *Zaza* the attribute of a component purchaser that required no warning because it knew or should have known of the potential hazard.[7] As I have already noted, this case lacks such an attribute, at least for purposes of

---

[6] The Eighth Circuit stated:

> The Missouri courts have not yet addressed the situation of a supplier's liability where a non-defectively designed or manufactured component part is alleged to become unreasonably dangerous only because of the supplier's failure to warn of a hazard that might arise after the part is integrated into a larger machine system. We conclude, however, that the Missouri courts would not extend liability so far as to hold the component part supplier responsible.

Crossfield, 1 F.3d at 703.

[7] Another Eighth Circuit case applying Missouri law and cited by the defendant, *Sperry v. Bauermeister, Inc.*, 4 F.3d 596 (8th Cir. 1993), is inapposite. In *Sperry*, there was no liability for failure to warn because the accident had nothing to do with any malfunction of the component part manufactured by the defendant. Rather, It was the "absence of an interlock safety or warning light," a flaw not attributable to the defendant, that caused the plaintiff to be injured by the component at issue. *Id*. at 599.

evaluating the summary judgment motion.[8] A genuine issue of material fact remains concerning whether the defendant breached a duty to warn Bath Iron Works not to use the switch in the manner in which it was actually employed. Therefore, the defendant is not entitled to summary judgment based on the lack of any duty.

The defendant further contends that the plaintiff cannot establish that any failure to warn was a proximate cause of his injury. According to the defendant, this is so because the plaintiff and Bath Iron Works "have concocted at least three contradictory theories" about the accident, because the plaintiff's expert is not familiar with industrial sensors, safety engineering, or "human factors engineering," and because his opinion that a warning was required amounts to speculation.[9] Defendant's Motion for Summary Judgment (Docket No. 7) at 13. If contradictory theories exist as

---

[8] The other cases cited by the defendant are also either distinguishable or not supportive of the defendant's position. In *Childress v. Gresen Mfg. Co.*, 888 F.2d 45, 47 (6th Cir. 1989), *Spangler v. Kranco, Inc*., 481 F.2d 373, 374 (4th Cir. 1973), *Lesnefsky v. Fischer & Porter Co.*, 527 F.Supp. 951, 953-54 (E.D.Pa. 1981), and *Munger v. Heider Mfg. Corp*., 456 N.Y.S.2d 271, 273 (App.Div. 1982), the manufacturer produced the component to the purchaser's specifications. In *Cropper v. Rego Distrib. Ctr., Inc.*, 542 F.Supp. 1142 (D.Del. 1982), the plaintiff did not allege a failure to warn on the part of the component manufacturer. Finally, in *Koonce v. Quaker Safety Prods. & Mfg. Co.*, 798 F.2d 700, 715 (5th Cir. 1986), the Fifth Circuit declined to disturb a jury's finding that the manufacturer of a safety suit was liable for failing to issue a warning about the suit's limitations, even if the suit could be construed to have been only a component of a larger safety systems.

[9] The defendant makes the assertion in its Local Rule 56 factual statement that the "plaintiff, his employer and expert witness have each postulated separate theories as to the mechanics of the accident." Defendant's SMF at ¶ 9. However, the cited portions of the record do not fairly stand for the proposition. Instead, they establish that the plaintiff's non-expert view is that the nozzle simply went off by itself, Godin Dep. at 50-51, that a safety investigator for Bath Iron Works believed that the spring on the switch had been bent and "leaned against," Mathisen Dep. at 54, but that some other unknown "protrusion" also could have played a role, *id*. at 43, that the plaintiff's expert had an understanding of the basic circumstances of the accident, McEntee Dep. at 5, and that he believed the hose had been draped at the time of the accident over the front of the "cage" to the lift in which the plaintiff had been working, *id*. at 40. Therefore, I do not credit the assertion contained in paragraph 9 of the factual statement, nor do I credit, for reasons already stated, the numerous factual assertions in the body of the defendant's legal discussion of the proximate cause issue.

to causation, this only tends to underscore that a genuine issue of material fact exists as to this aspect of the case such that summary judgment for the defendant is inappropriate. As to the contentions that the plaintiff's case is fatally flawed because his expert is engaging in speculation outside his specific area of expertise, and because his opinions lack the requisite basis in reliable scientific theory, the summary judgment record is insufficiently developed for the court to consider that possibility and so the issue is properly left to a later stage in the proceeding.

b. Spoliation of Evidence

As an entirely separate ground for summary judgment, the defendant urges the court to take the extraordinary step of entering judgment in its favor based on the plaintiff's spoliation of evidence, specifically the switch that is at the heart of the case. The defendant readily concedes that the plaintiff himself is guilty of no such misdeed, attributing the spoliation instead to Bath Iron Works. The defendant contends nevertheless that the spoliation should be imputed to the plaintiff because his receipt of workers' compensation benefits gives Bath Iron Works a lien for the value of those benefits against any judgment the plaintiff may recover here. *See* 39-A M.R.S.A. § 107.

The real issue is not whether the plaintiff can somehow be held responsible for the disappearance of this obviously important evidence, but whether the defendant will suffer unfair prejudice as a result. *Sacramona v. Bridgestone/Firestone, Inc.*, 106 F.3d 444, 446 (1st Cir. 1997) ("Although deterrence may play a role, the primary aim is remedial, at least absent willful destruction.").[10] As the plaintiff points out, it is more than plausible that both sides, or either side,

[10] As I read *Sacramona*, the court's inherent authority extends only to excluding evidence because of spoliation, *Sacramona*, 106 F.3d at 446; summary judgment in favor of the defendant would then only be appropriate if the evidentiary ruling had the effect of eviscerating the plaintiff's (continued...)

would be prejudiced by the absence of the evidence in question. Therefore, it cannot be said at this stage that any unfair prejudice to the defendant has resulted, and accordingly the absence of the switch does not alter the summary judgment calculus.

III. Conclusion

For the foregoing reasons, I recommend that the defendant's motion for summary judgment be **DENIED.**

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 22nd day of October, 1997.

_____

David M. Cohen
United States Magistrate Judge

[10](...continued)
prima facie case. The defendant does not make clear precisely which evidence it would exclude because of spoliation, choosing instead to reprise its theme that the plaintiff's case is speculative, the more so without the switch.